

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION IV

CA06-643

LUELLA GILL, as administratrix of the
ESTATE OF WILLIAM C. GILL,
deceased

APPELLANT

V.

LUCIUS E. SYKES and ROOSEVELT
URQUHART

APPELLEES

APRIL 25, 2007

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CV-2004-772-3]

HON. ROBERT HOLDEN WYATT, JR.,
JUDGE

AFFIRMED

Appellant Luella Gill, administratrix for the estate of William C. Gill, deceased, appeals the Jefferson County Circuit Court judgment entered February 1, 2006, in favor of the appellees Lucius E. Sykes and Roosevelt Urquhart, and the February 28, 2006, order denying her motion for new trial. Appellant contends that the trial court erred by refusing to grant a new trial and by refusing to grant a judgment notwithstanding the jury verdict at the conclusion of trial. We affirm.

William C. Gill filed suit against appellee Lucius Sykes to recover damages that he claimed arose as a result of injuries suffered in a pick-up truck collision.¹ Gill was a passenger

¹William C. Gill died from illnesses unrelated to this accident and the action was continued by appellant Luella Gill, William's widow, in her capacity as administratrix of

in a pick-up truck driven by Urquhart on May 20, 2002. Gill was riding in the front seat and Nettie Urquhart, Roosevelt's wife, was riding in the back seat. As the Urquhart truck traveled through an intersection, it was struck by another pick-up truck driven by Sykes. The Sykes truck hit the Urquhart truck directly in the side. All three people in the Urquhart truck were taken by ambulance to the hospital. Mrs. Urquhart remains paralyzed as a result of the accident. Gill claimed personal injuries from the wreck as a non-negligent passenger and brought suit to recover damages.

At trial, both drivers claimed to have had the green light. Mr. John Thomas testified that the light was green when Sykes entered the intersection. Mr. James Murry testified that the light was not green when Sykes entered the intersection. Nettie Urquhart testified that the light was green when her husband entered the intersection. Gill's deposition testimony was that the light was green when Urquhart entered the intersection. Appellant testified that her husband's medical bills from the accident totaled \$6,281.50. The jury determined that neither Sykes's nor Urquhart's negligence was the proximate cause of any damages to Gill and did not award any damages. Appellant sought a judgment notwithstanding the verdict, and the trial court denied the motion. Appellant filed a motion for new trial, and a separate hearing was held February 27, 2006. By order of February 28, 2006, the trial court denied the motion. This appeal follows.

When a motion for new trial is made on the ground that the verdict was clearly against the preponderance of the evidence and is denied by the trial court, see Ark. R. Civ. P.

his estate. She amended the action to add appellee Roosevelt Urquhart as a defendant.

59(a)(6), this court will affirm if there is substantial evidence to support the verdict. *Esry v. Carden*, 328 Ark. 153, 942 S.W.2d 846 (1997); *Patterson v. Odell*, 322 Ark. 394, 909 S.W.2d 648 (1995). Substantial evidence is evidence of sufficient force and character to compel a conclusion one way or the other with reasonable certainty. *Esry, supra*. The evidence must force the mind to pass beyond suspicion or conjecture. *Id.* In examining whether substantial evidence exists, the verdict is given the benefit of all reasonable inferences permissible in accordance with the proof. *Patterson, supra*.

Appellant first claims that her husband was a passenger and that, but for the negligence of either appellee or both, he would not have been injured. She argues that no one at trial claimed that her husband was negligent. Further, she claims that he received immediate medical attention as a result of the accident. She argues that this medical attention was necessary because he was complaining of pain to the right side of his head, right shoulder, and right side of his neck immediately following the accident. She argues that it cannot be logical to conclude that his ambulance ride and emergency room visit were related to a previous injury and not the accident, especially in light of the severe-impact accident in which he was involved. She argues that there was causation for, at minimum, the charges incurred on the day of the wreck.

Appellant also argues that the appellees' attorneys agreed that her husband should be entitled to recovery. In both voir dire and in his opening statement, Sykes's attorney stated that the jury would give a verdict to Gill. In his opening statement, Urquhart's attorney conceded that the verdict would be for Gill.

Appellant cites several cases involving motions for new trial. In *Depew v. Jackson*, 330 Ark. 733, 957 S.W.2d 177 (1997), the Arkansas Supreme Court affirmed the trial court's denial of Depew's motion for new trial, finding substantial evidence to support the jury's verdict and award of \$1600 to Depew based upon the expert's testimony that the accident did not aggravate the injury, but instead brought to light Depew's preexisting problem. In *Dovers v. Stephenson Oil Co., Inc.*, 354 Ark. 695, 128 S.W.3d 805 (2003), the Arkansas Supreme Court upheld the trial court's denial of a motion for new trial where testimony of the driver was sufficient to establish that the driver was not negligent. Appellant in the instant case tries to distinguish *Dovers* and *Depew*, arguing that the wreck could not have occurred without any negligence and the immediate medical attention was necessary due to the nature of the wreck.

In *Machost v. Simkins*, 86 Ark. App. 47, 158 S.W.3d 726 (2004), the parties were involved in a car accident, where Simkins's vehicle struck a vehicle in which Machost was a passenger. Simkins admitted liability and the case was tried to a jury on the issue of damages. Simkins's counsel made concessions to the jury that his client was responsible for the accident.

A doctor testified that Machost's complaints were consistent with her injuries from the accident. The jury returned a general verdict for Machost in the amount of \$2000. Machost filed a motion for new trial based upon a juror's affidavit stating that the jury assumed the \$10,000 in medical bills had been resolved and would be paid automatically, and the \$2000 awarded by the jury was only for her pain and suffering. The trial court denied the motion for new trial. On appeal, this court held that the jury's verdict was clearly against the preponderance of the evidence and reversed the trial court's denial of a motion for new trial.

Appellees argue that *Machost* is unlike the instant case because there, counsel for the defendant explicitly and repeatedly conceded to the jury both the reasonableness and necessity of the medical expenses and advised the jury that Machost's medical bills were not in dispute. Here, neither appellee admitted that he was negligent nor that Gill had been injured, and both disputed the reasonableness of Gill's medical bills.

Appellees contend that there was substantial evidence to support the jury's verdict. Appellant introduced medical bills to establish Gill's injuries; however, appellees argue that the jury also received evidence of substantial pre-existing injuries and medical conditions suffered by Gill. Evidence established that Gill slipped on a wet floor in 1990 and hurt the left side of his head, neck and back. He also suffered post-traumatic-stress syndrome as a result of his military service in Vietnam. Admitted into evidence was a report prepared by Dr. John H. Dodson containing at least seven medical problems suffered by Gill, including degenerative-disc disease and post-traumatic epilepsy. A supplemental report of Dr. Dodson dated January 17, 1991, stated that the total-permanent impairment suffered by Gill was sixty-nine percent.

Appellees also argue that interrogatory number three and the verdict form make it abundantly clear that the jury simply found no damages to have been suffered by Gill in the accident. The interrogatories and verdict form are as follows:

INTERROGATORY NO. 1: Do you find from a preponderance of the evidence that there was negligence upon the part of LUCIUS E. SYKES which was a proximate cause of any damages?

ANSWER: Yes _____ No X_____

Marshall Matthews
FOREPERSON

INTERROGATORY NO. 2: Do you find from a preponderance of the evidence that there was negligence upon the part of ROOSEVELT URQUHART which was the proximate cause of any damages?

ANSWER: Yes _____ No X_____

Marshall Matthews
FOREPERSON

INTERROGATORY NO. 3: If you answered Interrogatories 1 and 2 “Yes,” then answer this Interrogatory:

Using 100% to represent the total responsibility for the occurrence and any injuries or damages resulting from it, apportion the responsibility between the parties whom you have found to be responsible.

ANSWER: LUCIUS E. SYKES _____ %
ROOSEVELT URQUHART _____ %

Marshall Matthews
FOREPERSON

VERDICT

We the Jury, find for the Plaintiff, LUELLA GILL, as Administratrix of the Estate of WILLIAM C. GILL, and affix her damages as \$0.00.

Marshall Matthews
FOREPERSON

Interrogatory number three was only to be answered if the jury had found either Urquhart or Sykes negligent in interrogatory numbers one and two. The jury did not; therefore, it declined to apportion liability to appellees in interrogatory number three. Finally,

the verdict form states that the jury found in favor of the appellant, but affixed her damages as zero. Urquhart contends that evidence was introduced as to preexisting conditions related to the exact areas of the body that appellant claims Gill injured in the accident. Further, the jury had evidence that Gill was not completely reliable from a mental standpoint in that he had been diagnosed with post-traumatic-stress disorder. Urquhart argues, and we agree that, in light of *Depew, supra*, where the court held that the mere fact that a plaintiff has incurred medical expenses and the defendant has admitted liability, does not automatically translate into a damage award equivalent to those expenses, there was substantial evidence before the jury in the instant case for them to deny an award of damages.

Appellant argues in her second point on appeal that the trial court erred by refusing to grant her motion for judgment notwithstanding the verdict. She relies on her arguments as stated above. However, appellees contend that under Ark. R. Civ. P. 50(b), a party must move for a directed verdict at the close of all the evidence and be denied before he may move the court for a judgment notwithstanding the verdict. *King v. Powell*, 85 Ark. App. 212, 148 S.W.3d 792 (2004). Here, appellees contend that appellant failed to move for a directed verdict at the close of all evidence and is now barred from seeking such relief. Based upon Ark. R. Civ. P. 50(b) and *King, supra*, we agree.

Affirmed.

BIRD and VAUGHT, JJ., agree.